

IN THE DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

HARVEY STEWART,)	
)	
Plaintiff,)	
)	
v.)	CASE NO.: 04-11598-WGY
)	
R. JAMES NICHOLSON, ¹)	
SECRETARY U.S. DEPARTMENT)	
OF VETERANS AFFAIRS,)	
)	
Defendant.)	

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant, R. James Nicholson, as he is Secretary of the U.S. Department of Veteran Affairs, hereby moves pursuant to Rule 56 for summary judgment on grounds that there is no genuine issue as to any material fact of record in this case. As set forth more fully in defendant's Memorandum of Law in Support of Motion for Summary Judgment, defendant states that he is entitled to judgment because as a matter of law plaintiff did not suffer an adverse employment action for purposes of Title VII when he received a written counseling on December 5, 2001, since the counseling was not discipline, and no negative consequences followed, and in any event plaintiff cannot show a causal connection between the protected activity and the counseling more than three years later.

The December 2001 counseling was the only alleged retaliatory action within the 45 days preceding plaintiff's initiation of an administrative EEO claim. Since it is not an actionable adverse action, nor causally related to the events of 1998 and 1999, it cannot anchor a claim of retaliatory harassment, and judgment should enter for defendant.

¹ R. James Nicholson is automatically substituted for former Secretary, U.S. Department of Veterans Affairs Anthony J. Principi pursuant to Rule 25(d)(1), Fed. R. Civ. P.

WHEREFORE defendant asks that the Court grant this Motion and enter judgment for the defendant.

By his attorney,

MICHAEL J. SULLIVAN
United States Attorney

Dated: 20 May 2005

By: /s/ Barbara Healy Smith
Barbara Healy Smith
Assistant U.S. Attorney
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CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 7.1(a)(2)

Pursuant to Local Rule 7.1(a)(2), the undersigned counsel certifies that on May 19, 2005, she spoke with plaintiff's counsel, Jennifer Davis, in a good faith effort to resolve the issue.

/s/ Barbara Healy Smith
Barbara Healy Smith
Assistant U.S. Attorney